



November 29, 1999

Mr. Paul Webb  
City Attorney  
City of Wharton  
221 North Houston Street  
Wharton, Texas 77488

OR99-3406

Dear Mr. Webb:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129852.

The City of Wharton (the "city") sought the opinion of this office in regard to information in the city's possession. Your request letter includes the notation "Re: Request for Information from Wharton Journal-Spectator." However, you have not included and do not reference a written request for information. The city has no obligation under the Public Information Act to respond to unwritten requests for information. Open Record Decision No. 304 (1982); Gov't Code 552.301(a). Further, a request for an open records decision must come from a governmental body that has received a written request for information. Open Records Decision Nos. 542 (1990), 449 (1986). Otherwise, the Attorney General does not have jurisdiction under the Public Information Act to determine whether the information is excepted from public disclosure. For purposes of this decision, we assume the submitted materials are responsive to a written request for information.

We initially note that the Public Information Act requires a governmental body that wishes to withhold requested information to (1) request a decision from the Attorney General as to whether the information is within an exception to disclosure, (2) provide the requestor a copy of that request for decision, and (3) and provide the requestor a statement that the governmental body wishes to withhold the information and has sought a decision from the Attorney General. Gov't Code § 552.301. These requirements must be met by the governmental body within ten business days of the governmental body's receipt of the

request for information. *Id.* The governmental body must also provide to the Attorney General, (1) written comments stating the reasons why the stated exceptions apply to the requested information, (2) a copy of the request for information, (3) a signed statement of the date the request for information was received by the governmental body, or sufficient evidence to establish that date, and (4) a copy of the specific information requested, or a representative sample thereof, labeled to indicate which exceptions apply to which parts of the copy. Gov't Code § 552.301(e). These requirements must be met by the governmental body within fifteen business days of the governmental body's receipt of the request for information. *Id.* As you have not complied with the requirements of Government Code section 552.301, the requested information is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information. Gov't Code § 552.302. A compelling reason is demonstrated where information is made confidential by other law, or where third party interests are at issue. Open Record Decision No. 150 (1977).

The submitted information includes items which are confidential by law. The Public Information Act prohibits the release of confidential information. Gov't Code § 552.352. Section 552.101 excepts from disclosure information that is considered confidential by law, either constitutional, statutory, or by judicial decision. Because release of confidential information constitutes a misdemeanor, the attorney general will raise section 552.101 on behalf of a governmental body, although the attorney general will ordinarily not raise an exception that a governmental body has failed to claim. Open Records Decision 455 at 3 (1987).

Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if (1) the information contains highly intimate or embarrassing facts about a person's private affairs such that release of the information would be highly objectionable to a reasonable person, and (2) the information is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment in *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied). The investigation files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

A governmental body must withhold the identities of alleged victims and witnesses to alleged sexual harassment as well as any information which would tend to identify a witness

or victim. Open Records Decision Nos. 393 (1983), 339 (1982). However, the common-law right of privacy does not protect facts about a public employee's alleged misconduct on the job or complaints made about his performance. Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978). The information which identifies alleged victims and witnesses to alleged sexual harassment must be withheld under section 552.101 of the Government Code. The other responsive information, including the identity of the alleged perpetrator, must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Jay Burns".

Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 129852

Encl. Submitted documents

cc: Mr. Ron Snaders  
News Editor  
Wharton Journal-Spectator  
Post Office Box 111  
Wharton, Texas 77488  
(w/o enclosures)